Supreme Court, U.S.
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IN THE SUPREME COURT FOR
THE UNITED STATES
OCTOBER 1994

IN THE MATTER OF ROBERT K. HUDNALL

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

1.) May the Supreme Court of the State of Georgia administratively disbar an attorney without notice of its proposed action or a hearing and in circumvention of both Federally and State protected rights to due process and equal protection of the law and State law?

2.) May the Supreme Court of the State of Georgia refuse to consider properly presented evidence of fraud on the court in regard to a disciplinary proceeding?

3.) May the Supreme Court of the State of Georgia deprive an attorney of a privilege or immunity guaranteed under the Privilege and Immunities Clause of the U.S. Constitution without due process?

4.) Must an accused attorney be notified of the proposed

punishment to be inflicted against him?

5.) Is the procedure used by the Supreme Court of Georgia, which allows the State Bar to act in a prosecutorial role against an accused attorney and conduct disciplinary hearings and make recommendations to the Court and also recommend the punishment for the Court's routine approval without notice of the proposed action or a hearing, a conflict of interest and a violation of procedural due process of law?

6.) Is the disciplinary rule of the State Bar of Georgia that makes resignations automatically "tantamount to disbarment" a circumvention of Georgia Statute 15-19-32 which requires a hearing before the State Supreme court can enter a finding of disbarment and a violation of an accused attorney's right to due process of law?

7.) May the State Bar of Georgia, an administrative arm of the State Supreme Court take, administratively, a disciplinary action that the Court, itself, is specifically

prohibited from judicially employing by statute?

8.) Is there a constitutional right to practice law?

9.) May the Supreme court of Georgia enter an order effectively disbarring an accused attorney without his knowledge and participation?

10.) May the Supreme Court of the State of Georgia consider evidence legally inadmissible by both its' own rulings and state statutes in arriving at a finding of "tantamount to disbarment"?

11.) Are disciplinary proceedings criminal in nature such that the accused attorney is entitled to the protections due criminal defendants?

12.) Is "tantamount to disbarment" a legally valid finding in regard to an accused attorney?

13.) To arrive at a decision that an accused attorney has been "tantamount to disbarred" would the Supreme Court of

the State of Georgia have to give the same protections to the accused as are required before entering a finding of disbarment?

PARTIES TO THE PROCEEDING

ROBERT K. HUDNALL

STATE BAR OF GEORGIA

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District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, n. 15 (1982)..

Fifth Amendment, U.S. Constitution.

Fourteenth Amendment, U.S. Constitution.

Fourth Amendment, U.S. Constitution.

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GEORGIA CODE ANNOTATED:
Section 15-19-32

Section 24-07-02

Section 24-07-04

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Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1984).

OFFICIAL OPINIONS RENDERED

IN THE MATTER OF ROBERT K. HUDNALL,
259 Ga 247, 379 SE2D 517 (Ga. 1989)
Original Decision, Dated: May 25, 1989 (Appendix A)

IN THE MATTER OF ROBERT K. HUDNALL,
259 Ga 247, 379 SE2D 517 (Ga. 1989)
Denial of Rehearing. Dated: March 17, 1994 (Appendix B)

IN THE MATTER OF ROBERT K. HUDNALL
259 Ga 247, 379 SE2D 517 (Ga. 1989)
Denial of Rehearing. Dated: February 17, 1995 (Appendix C)

GROUNDS FOR JURISDICTION

1.) **The date of the entry of judgment sought to be reviewed;**

On May 25, 1989, the Supreme Court of the State of

Georgia entered a decision without notifying Petitioner that there was to be a hearing. In this hearing, what purported to be Petitioner's resignation was submitted and the Court held that this resignation was accepted as tantamount to disbarment. Petitioner was never notified of this decision.

2.) **Date of any order respecting a rehearing.**

(a.) In October, 1993, Petitioner was made aware of the 1989 action of the Georgia Supreme court when he was terminating from a high paying position for not having told them that he was disbarred. Petitioner immediately moved to have the matter heard before the Georgia Supreme Court but the request was denied on March 17, 1994.

(b.) After researching the matter, Petitioner discovered that the purported resignation was a forgery and not legally admissible under Georgia law. Therefore, Petitioner asked for a rehearing based on the fraud on the

court that had taken place. The Georgia Supreme Court refused to even look at the matter and on February 17, 1995, the request for rehearing was again denied.

The statutory provisions believed to confer on this Court jurisdiction to review the judgment or decree in question.

a.) **28 U.S.C., Section 1257(a)**

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may by reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed

under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States."

b.) This is a matter of attorney discipline. This Court has made it very clear that for specific challenges of the actions of a state's highest court, only the Supreme Court can review these matters. This was made clear in the following cases: **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, 482, n. 15 (1982); **Berman v. Florida Board of Bar Examiners,** 794 F.2d 1529 (11th Cir. 1986); **Michaelis v. Nebraska State Bar Association,** 717 F.2d 437 (8th Cir. 1983); **MacKay v. Nesbett**, 412 F.2d 846 (9th Cir.), cert. denied 396 U.S. 960 (1969); **Arthur v. Supreme Court of Iowa**, 709 F.Supp. 157 (S.D. Iowa 1989); and **Newsome v. Dominique**, 455 F.Supp. 1373, (E.D. Mo. 1978).

Finally, disciplinary orders of the highest court of

a state may be reviewed federally only in the Supreme Court by petition for writ of certiorari. **Grossgold v. Supreme Court of Illinois**, C.A.7 (Ill.) 1977, 557 F.2d 122.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE.

1.) **Constitutional Provisions:**
a.) U.S. Constitution

Article IV, Section 2 - (Privileges and Immunities Clause)

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

Fourth Amendment

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment

Section 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have

compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

2.) **Treaties**

None

3.) **Statutes**

Georgia Code Annotated, Section 15-19-32.

"Rules and regulations governing the Unifed State Bar shall provide that before a final order or any nature or any judgment of disbarment is entered, the attorney involved may elect to have any material issue of fact determined by a jury in the county of his residence."

Georgia Code Annotated, Section 24-7-2

"If a paper appears to have been altered materially, unless it is the paper sued on and no plea of NON EST FACTUM is filed, the party offering it in

evidence shall explain the alteration,unless it comes from the custody of the opposite party."

Georgia Code Annotated, Section 24-7-4

"The subscribing witness shall be produced in all cases, except the following:

1.) Ancient writing which prove themselves.

2.) If from any cause the witness can't be produced or sworn.

3.) Office bonds required by law to be approved or tested by particular functionaries.

4.) If the paper is only incidentally or collaterally material to the case; or

5.) If the party executing the written instrument testifies to it's execution.

STATEMENT OF THE CASE

This is an attorney disciplinary matter. Petitioner was administratively disbarred by the Supreme Court of the State of Georgia under a State Bar administrative disciplinary rule that allowed the Court to deprive Petitioner of any opportunity for a hearing on the allegations against him. Petitioner was allowed no input into the matter before the Court and was never apprised that any punishment would be forth coming from the Court.

Once the Court had rendered its' decision, Petitioner was still not informed and only found out three years later when he was terminated from a sensitive position for having failed to tell his employer that he had been disbarred.

Petitioner asked for reinstatement and submitted a petition showing that his due process has been violated. The Petition was denied. [Georgia's

reinstatement process consists of the one who wishes to be reinstated to have two thirds (2/3) of the attorneys practicing in his former circuit or one hundred (100) attorneys state wide to sign a petition recommending the reinstatment of the former attorney before the request will be considered. Then, according to a representative of the General Counsel's office, (Ms. Jennie Mittleman) the State Bar will still oppose the reinstatement as a matter of policy] The State Supreme Court also refused to consider evidence of fraud having been committed on the Court in the conduct of Petitioner's original "tantamount to disbarment".

ARGUMENT

Not only did the State Supreme Court not offer Petitioner even the opportunity for a hearing as required by both Georgia State and Federal law, but additionally, the State Bar, which acted as the prosecutor as well as handled all of the matters for the

Court also failed to inform Petitioner of his rights in the matter, or that there was any intention to try and have Petitioner disbarred, later citing **Gordon v. Clinkscales**, 215 Ga. 843; **Sams v. Olah**, 225 Ga. 497, 504; and **Cushway v. State Bar of Georgia**, 120 Ga. App. 371 as their authority for taking the position that "it is well settled that disbarment proceedings are not criminal in nature and that there is no constitutional right to practice law." Based on this position, the State bar determined that Petitioner had no rights that they were required to protect.

Both of these positions have been over turned by decisions of the U. S. Supreme Court. As to the rights of the accused attorney in a disciplinary action, in **Geiger v. Jenkins**, 401 U.S. 985 (1971), this Court held that "actions by state agencies to take the license to practice away from a professional are criminal in nature. The accused is entitled to the protections

normally given to individuals accused of crimes."

In **Supreme Court of New Hampshire v. Piper**, 470 U.S. 274 (1984), this Court held that: "the opportunity to practice law is a fundamental right and a privilege protected by the Privileges and Immunities Clause of Article IV, Section 2 of the U.S. Constitution. Additionally, under the holding of **In Re Ruffalo**, 390 U.S. 544 (1967) Petitioner was entitled to be informed of any proposed punishment prior to it being inflicted.

Therefore, Petitioner would submit that the actions of the State Supreme Court of Georgia denied him a privilege protected by the Privileges and Immunities Clause of the U.S. Constitution. Additionally, Petitioner has never been allowed a hearing on the allegations against him. The following cases make it clear that prior to being disbarred, or "tantamount to disbarment" , Petitioner was entitled to a fair and impartial hearing on the merits of the

allegations: **In Re Murchison**, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942; **Offutt v. United States**, 348 U.S. 11, 12, 99 L.Ed. 11, 75 S.Ct. 11, 13; **Berryhill v. Gibson**, 331 F.Supp. 122 (1971); **Bradley v. Fisher**, 60 U.S. 335, 20 L.Ed. 464 (1871); **In Re Ruffalo**, 390 U.S. 544 (1967); **Mildner v. Gulotta**, 405 F.Supp. 182 (1975), 96 S.Ct. 1489; **Daniels v. Williams**, 474 U.S. 327 (1986); **Leis v. Flynt,** 439 U.S. 438 (1979).

Additionally, a disbarment in such an arbitrary manner was a taking of property as shown by **Schwarz v. Board of Bar Examiners**, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 and **Konigsberg V. State Bar of California**, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810. Finally, it is also clear that such arbitrary actions by the Supreme Court of Georgia also violated Petitoner's right to equal protection of the law as shown by **Sunday Lake Iron Co. v. Wakefield**, 247 U.S. 350, 352 (1918),

62 L.Ed. 1154, 38 S.Ct. 495; **New York Transit Authority v. Beazer**, 440 U.S. 568, 587 (1979), 59 L.Ed.2d 587, 99 S.Ct. 1355 and **Hill v. Texas**, 316 U.S. 400, 406 (1942), 86 L.ed. 1559, 62 S.Ct. 1159.

Petitioner has been denied his day in court in a very arbitrary fashion. The sole item upon which the Supreme Court of Georgia based its' action has been shown by this Petitioner to not only be a forgery, but a document also legally inadmissible under Georgia law. The document in question is the purported **Petition for Voluntary Surrender of License** placed before the State Supreme Court by the State Bar. This is the document that the Bar maintains was signed by Petitioner in California. However, the Supreme Court of Georgia has held that an affidavit made outside of Georgia before a notary public of another state, with his seal attached thereto, is receivable in the Courts of Georgia without further authentication as shown in

Simpson v. Wicker, 120 Ga. 418 (47 S.E. 965); **Ballew v. Broach**, 121 Ga. 421 (49 S.E. 297); **Singletary v. Watson**, 136 Ga. 241 (1911).

However, an affidavit sworn outside of Georgia cannot be recognized in Georgia without due authentication as held in **Charles v. Foster**, 56 Ga. 613, 615 (1876). The document that purports to be Petitioner's resignation was allegedly signed in California but was not notarized. Therefore it is not admissible in Georgia Courts. It was accepted anyway based on the single fact that the State Bar placed the document before the Court. This, in effect, denied Petitioner the equal protection of the law.

Under the provisions of **Georgia Code Annotated, Section 24-7-4**, the State Bar was required to authenticate the document in question, before it was offered into evidence, which was not done. Under the provisions of **Georgia Code**

Annotated, Section 24-7-2, when Petitioner submitted a NON EST FACTUM denying signing the document and a handwriting analysis casting doubt on the validity of the signature. the Court should have required to Bar to address Petitioner's submission. The Court not only asked for no authentication, but even denied properly submitted evidence of fraud on the Court being committed by the State Bar.

The U.S. Supreme Court held in **Hazel-Atlas Glass Company v. Hartford-Empire Company**, 322 U S. 238-271, that "upon a showing of fraud, the lower court has both the duty and the power to vacate its' own judgment." However, the Georgia Supreme Court ignored all briefs by Petitioner regarding this issue.

Based on the foregoing, it is clear that Petitioner failed to receive even a modicum of due process of law. At no time did Petitioner waive his rights, but the State Bar of Georgia "assumed" a waiver based on the

submission of the purported resignation. However, **Sams v. Olah**, 225 Ga. 407, one of the same cases used by the State Bar of Georgia to justify their "tantamount to disbarment" action, was actually a challenge to the Legislative Act that created the Unified Bar of Georgia (**Georgia Laws, 1963, Pages 70-72**). The State Supreme Court found that the Act was constitutional, but specifically found that Section 3 of the Act was constitutional. Section 3 was codified as **Georgia Code Annotated, Section 15-19-32** which stated that before the State Supreme Court could enter any decision, but specifically before it could enter a disbarment against an attorney, a jury trial was an entitlement of the accused attorney in question.

Therefore, when the Supreme Court of Georgia rendered its' "tantamount to disbarment" decision against this Petitioner it was not only violating Petitoner's right to due process and equal protection of

the law, but also violating Georgia law. Petitioner would submit that the disciplinary rule that created the tantamount to disbarment status was designed to circumvent both Federally protected rights and Georgia law and denied Petitioner rights due him under the Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

Finally, Petitioner would submit that the imposition of the status of "tantamount to disbarment" is to enable the State to take away someone's right ot practice without allowing him the protection of his constitutional rights. There can be no other rationale for the imposition of a punishment which means the same and has the same effect as disbarment, but lacks the constitutional protctions that govern the imposition of a disbarment finding by the State Supreme Court. This Court has held that if the only objective of a state practice is to discourage the assertion of constituional

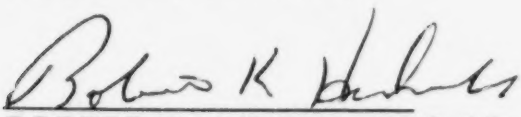
rights, then it is patently unconstitutional. **Chaffin v. Stynchcombe**, 412 U.S. 17, 36 L.Ed. 2d 714, 93 S.Ct. 1977 (1983).

Finally, to allow an arbitrary, administrative disbarment by the State Bar is to allow the Bar to interfere with the integrity of the public institution of the court system. The use of what amounts to fabricated evidence by the State Bar before the State Supreme Court and the very clear policy of denial of a hearing to an accused attorney is a very clear signal that if one annoys the Bar, then one can lose one's profession very quickly. It also sends the signal that an attorney has less Constitutional rights than the average individual and serves only at the pleasure of the State Bar. This makes a mockery of "All men are created equal and endowed with the same rights" and is contrary to this Court's holding in **Ex Parte Secombe**, 60 U.S. 9, 19 How. 9, 15 L.Ed. 565.

For these reasons, Petitioner would ask that the U.S. Supreme Court grant his Petition to review this matter as this is the only forum that Petitioner can turn to in order to ask for justice as the Supreme Court is the only federal court authorized to hear appeals from state courts. **Elks Nat. Foundation v. Weber**, C.A.9 (Mont.) 1991, 942 F.2d 1480, certiorari denied 112 S.Ct. 2995, 120 L.Ed.2d 872.

Under the provisions of Rule 29(c), **28 U.S.C, Section 2403(b)** may be applicable and the Court did not certify to the State Attorney General that the constitutionality of a statute was drawn into question..

Respectfully submitted,



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